

EXHIBIT B

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Attorneys for Plaintiff Blendtec Inc.

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

BLENDTEC INC., a Utah corporation,
Plaintiff,

vs.

BLENDJET, INC., a Delaware corporation,
Defendant.

**BLENDTEC’S OBJECTIONS TO
BLENDJET’S SUBPOENAS TO
DORSEY & WHITNEY, LLP AND
HOLLAND & HART, LLP**

Civil No. 2:21-cv-00668-TC-DBP

Judge Tena Campbell

Magistrate Judge Dustin B. Pead

Pursuant to Federal Rules of Civil Procedure 26, 34, and 45, Plaintiff Blendtec Inc. (“Blendtec”) hereby submits its objections to Blendjet Inc.’s (“Blendjet”) Subpoenas to Dorsey & Whitney LLP (“D&W”) and to Holland & Hart LLP (“H&H”) (the “Outside Counsel Subpoenas”). Based on Blendtec’s privilege in documents requested in the subpoenas, Blendtec objects to D&W and H&H responding to those requests subject to Blendtec’s specific objections set forth herein.

GENERAL OBJECTIONS

Blendtec objects to the identical subpoenas issued to D&W and H&H on the ground that the majority of any non-privileged documents requested in the subpoenas are within the possession, custody, or control of Blendtec. Party discovery is ongoing and Blendjet should pursue discovery of documents within Blendtec's possession and control from Blendtec prior to issuing third party subpoenas for those documents. Indeed, Blendtec has already produced to Blendjet several non-privileged documents responsive to the requests in the subpoenas, including a 1999 search report related to the Blendtec Mark (responsive to Subpoena Request Nos. 3-4), a cease and desist letter that D&W sent to Blendjet (responsive to Subpoena Request No. 8), agreements between Blendtec and Blendid and between Blendtec and Blendfresh (responsive to Subpoena Request No. 11), a document evidencing an assignment, license, or other agreement entered into by Blendtec related to the Blendtec Marks (responsive to Subpoena Request No. 12), and documents constituting factual material related to Blendjet and its Marks (responsive to Subpoena Request No. 18). Further, the requested documents constitute Blendtec's private confidential information. Where "subpoenas seek" a party's "personal, financial, private, and confidential information" that party "has standing to object to the subpoenas." *Moreno v. Zimmerman*, 2020 U.S. Dist. LEXIS 262249, at *9 (D. Wy. 2020). *See also Coffeyville Res. Ref. & Mktg., LLC v. Liberty Surplus Ins. Corp.*, 2008 U.S. Dist. LEXIS 91224 (E.D. Ark. 2008) (finding that a plaintiff had a personal right or privilege to its confidential business information).

Blendtec also objects because the subpoenas request documents that are covered by the attorney client privilege, work product doctrine, or any other immunity or privilege held by Blendtec. *See Minnesota Sch. Bds. Ass'n Ins. Trust v. Employers Ins. Co.*, 183 F.R.D. 627, 629

(N.D. Ill. 1999) (“[I]t is well-settled that a party has standing to object to a subpoena directed at a nonparty when the party claims a personal right or privilege regarding the documents sought.”). *See also Anderson v. Heartland Coca-Cola*, 2022 U.S. Dist. LEXIS 26332, *5-6 (D. Kan. 2022) (a motion to quash may be brought by a party “where the party seeking to challenge the subpoena has a personal right or privilege with respect to the subject matter requested in the subpoena.”). “Courts have observed that the right or privilege asserted need not be weighty.” *Francis v. Apex USA, Inc.*, 2020 U.S. Dist. LEXIS 263022, *9-10 (W.D. Ok. 2020) (citation omitted). (“The personal right or privilege claimed need not be weighty: parties need only have ‘some personal right or privilege in the information sought’ to have standing to challenge a subpoenaed third party.”). “Thus, a party has standing when the documents subject to a Rule 45 subpoena are protected by the work-product doctrine or attorney client privilege.” *Id.*

SPECIFIC OBJECTIONS

REQUEST NO. 1: All documents related to the evaluation, availability, and selection of the Blendtec Marks.

Response/Objections to Request No. 1: Blendtec objects to this Request because it seeks documents protected by the attorney-client privilege belonging to Blendtec. On November 17, 2022, Blendtec produced to Blendjet a privilege log identifying privileged documents. Blendtec also objects to this request because it relates to information regarding Blendtec to which Blendtec has a proprietary interest. Blendtec also objects on the ground that the subpoenaed documents are within Blendtec’s custody, possession, or control and party discovery is ongoing. Blendjet should seek the requested documents from Blendtec prior to burdening a non-party for information that is within a party’s custody. Blendtec intends to file a motion for protective order related to the documents Blendjet seeks through third party subpoenas instead of through the proper Rule 34

discovery process. Blendtec also intends to file a motion to quash the subpoenas with respect to privileged documents and with respect to documents that pertain to Blendtec to which Blendtec has a proprietary interest.

REQUEST NO. 2: All documents that relate to Blendtec's applications for federal registration of the Blendtec Marks, and to the subsequent examination and registration of the Blendtec Marks.

Response/Objections to Request No. 2: Blendtec objects to this Request because it seeks documents protected by the attorney-client privilege belonging to Blendtec. On November 17, 2022, Blendtec produced to Blendjet a privilege log identifying privileged documents. Blendtec also objects to this request because it relates to information regarding Blendtec to which Blendtec has a proprietary interest. Blendtec also objects on the ground that the subpoenaed documents are within Blendtec's custody, possession, or control and party discovery is ongoing. Blendjet should seek the requested documents from Blendtec prior to burdening a non-party for information that is within a party's custody. Blendtec intends to file a motion for protective order related to the documents Blendjet seeks through third party subpoenas instead of through the proper Rule 34 discovery process. Blendtec also intends to file a motion to quash the subpoenas with respect to documents that pertain to Blendtec and in which Blendtec has a proprietary interest.

REQUEST NO. 3: Any and all Searches or monitoring reports generated or commissioned in connection with the Blendtec Marks, including the results thereof.

Response/Objections to Request No. 3: Blendtec objects to this request because it relates to information regarding Blendtec and to which Blendtec has a proprietary interest. Blendtec also objects on the ground that the subpoenaed documents are within Blendtec's custody, possession, or control and party discovery is ongoing. Blendjet should seek the requested documents from Blendtec prior to burdening a non-party for information that is within a party's custody. Indeed,

Blendtec has already produced a search report conducted in 1999 related to the Blendtec Mark. Blendtec intends to file a motion for protective order related to the documents Blendjet seeks through third party subpoenas instead of through the proper Rule 34 discovery process. Blendtec also intends to file a motion to quash the subpoenas with respect to documents that pertain to Blendtec and in which Blendtec has a proprietary interest.

REQUEST NO. 4: Any and all Searches or monitoring reports generated or commissioned by or on behalf of Blendtec that include the term “BLEND,” including the results thereof.

Response/Objections to Request No. 4: Blendtec objects to this Request to the extent that it seeks documents protected by the attorney-client privilege belonging to Blendtec. On November 17, 2022, Blendtec produced to Blendjet a privilege log identifying privileged documents. Blendtec also objects to this request because it relates to information regarding Blendtec and to which Blendtec has a proprietary interest. Blendtec also objects on the ground that the subpoenaed documents are within Blendtec’s custody, possession, or control and party discovery is ongoing. Blendjet should seek the requested documents from Blendtec prior to burdening a non-party for information that is within a party’s custody. Blendtec intends to file a motion for protective order related to the documents Blendjet seeks through third party subpoenas instead of through the proper Rule 34 discovery process. Blendtec also intends to file a motion to quash the subpoenas with respect to documents that pertain to Blendtec and in which Blendtec has a proprietary interest.

REQUEST NO. 5: Any and all Searches or monitoring reports generated or commissioned by or on behalf of Blendtec that relate to a “swirl” design feature, including the results thereof.

Response/Objections to Request No. 5: Blendtec objects to this Request to the extent that it seeks documents protected by the attorney-client privilege belonging to Blendtec. On November

17, 2022, Blendtec produced to Blendjet a privilege log identifying privileged documents. Blendtec also objects to this request because it relates to information regarding Blendtec and to which Blendtec has a proprietary interest. Blendtec also objects on the ground that the subpoenaed documents are within Blendtec's custody, possession, or control and party discovery is ongoing. Blendjet should seek the requested documents from Blendtec prior to burdening a non-party for information that is within a party's custody. Blendtec intends to file a motion for protective order related to the documents Blendjet seeks through third party subpoenas instead of through the proper Rule 34 discovery process. Blendtec also intends to file a motion to quash the subpoenas with respect to documents that pertain to Blendtec and in which Blendtec has a proprietary interest.

REQUEST NO. 6: All documents related to Blendtec's policies, guidelines, and/or procedures employed or practiced (or that ought to be employed or practiced) in the selection, maintenance, registration, and protection of its trademarks.

Response/Objections to Request No. 6: Blendtec objects to this Request because it seeks documents protected by the attorney-client privilege belonging to Blendtec. On November 17, 2022, Blendtec produced to Blendjet a privilege log identifying privileged documents. Blendtec also objects to this request because it relates to information regarding Blendtec and to which Blendtec has a proprietary interest. Blendtec also objects on the ground that the subpoenaed documents are within Blendtec's custody, possession, or control and party discovery is ongoing. Blendjet should seek the requested documents from Blendtec prior to burdening a non-party for information that is within a party's custody. Blendtec intends to file a motion for protective order related to the documents Blendjet seeks through third party subpoenas instead of through the proper Rule 34 discovery process. Blendtec also intends to file a motion to quash the subpoenas with respect to documents that pertain to Blendtec and in which Blendtec has a proprietary interest.

REQUEST NO. 7: All documents that comprise or refer to surveys, focus groups, or market studies, or any other type of assessment that either D&W or Blendtec has conducted – or that any other third party has conducted on either of their behalf – in connection with the Blendtec Marks and/or the Blendtec Products.

Response/Objections to Request No. 7: Blendtec objects to this Request because it seeks documents protected by the attorney-client privilege belonging to Blendtec. On November 17, 2022, Blendtec produced to Blendjet a privilege log identifying privileged documents. Blendtec also objects to this request because it relates to information regarding Blendtec and to which Blendtec has a proprietary interest. Blendtec also objects on the ground that the subpoenaed documents are within Blendtec's custody, possession, or control and party discovery is ongoing. Blendjet should seek the requested documents from Blendtec prior to burdening a non-party for information that is within a party's custody. Blendtec intends to file a motion for protective order related to the documents Blendjet seeks through third party subpoenas instead of through the proper Rule 34 discovery process. Blendtec also intends to file a motion to quash the subpoenas with respect to documents that pertain to Blendtec and in which Blendtec has a proprietary interest.

REQUEST NO. 8: All documents evidencing or related to any effort to police, enforce, and/or defend the Blendtec Marks, including but not limited to any and all cease and desist letters that Blendtec has sent or received in relation to the Blendtec Marks.

Response/Objections to Request No. 8: Blendtec objects to this Request because it seeks documents protected by the attorney-client privilege belonging to Blendtec. On November 17, 2022, Blendtec produced to Blendjet a privilege log identifying privileged documents. Blendtec also objects to this request because it relates to information regarding Blendtec and to which Blendtec has a proprietary interest. Blendtec also objects on the ground that the subpoenaed documents are within Blendtec's custody, possession, or control and party discovery is ongoing. Blendjet should seek the requested documents from Blendtec prior to burdening a non-party for

information that is within a party's custody. Blendtec intends to file a motion for protective order related to the documents Blendjet seeks through third party subpoenas instead of through the proper Rule 34 discovery process. Blendtec also intends to file a motion to quash the subpoenas with respect to documents that pertain to Blendtec and in which Blendtec has a proprietary interest.

REQUEST NO. 9: All documents evidencing or relating to any disputes that Blendtec has had with any third parties that relate to or reference the Blendtec Marks.

Response/Objections to Request No. 9: Blendtec objects to this Request because it seeks documents protected by the attorney-client privilege belonging to Blendtec. On November 17, 2022, Blendtec produced to Blendjet a privilege log identifying privileged documents. Blendtec also objects to this request because it relates to information regarding Blendtec and to which Blendtec has a proprietary interest. Blendtec also objects on the ground that the subpoenaed documents are within Blendtec's custody, possession, or control and party discovery is ongoing. Blendjet should seek the requested documents from Blendtec prior to burdening a non-party for information that is within a party's custody. Blendtec intends to file a motion for protective order related to the documents Blendjet seeks through third party subpoenas instead of through the proper Rule 34 discovery process. Blendtec also intends to file a motion to quash the subpoenas with respect to documents that pertain to Blendtec and in which Blendtec has a proprietary interest.

REQUEST NO. 10: Documents sufficient to identify all Blendtec employees or agents who corresponded with D&W regarding the conception, development, selection, consideration, investigation, searching, evaluation of availability, application, registration, maintenance, and/or enforcement of any actual or potential trademark or service mark for Blendtec.

Response/Objections to Request No. 10: Blendtec objects to this Request because it seeks documents protected by the attorney-client privilege belonging to Blendtec. On November 17, 2022, Blendtec produced to Blendjet a privilege log identifying privileged documents. Blendtec

also objects to this request because it relates to information regarding Blendtec and to which Blendtec has a proprietary interest. Blendtec also objects on the ground that the subpoenaed documents are within Blendtec's custody, possession, or control and party discovery is ongoing. Blendjet should seek the requested documents from Blendtec prior to burdening a non-party for information that is within a party's custody. Blendtec intends to file a motion for protective order related to the documents Blendjet seeks through third party subpoenas instead of through the proper Rule 34 discovery process. Blendtec also intends to file a motion to quash the subpoenas with respect to documents that pertain to Blendtec and in which Blendtec has a proprietary interest.

REQUEST NO. 11: All documents related to any relationship, agreements, or joint venture between Blendtec and any other entity with a corporate name or registered trademark that includes the word "blend," including but not limited to Blendfresh and Blendid.

Response/Objections to Request No. 11: Blendtec objects to this Request because it seeks documents protected by the attorney-client privilege belonging to Blendtec. On November 17, 2022, Blendtec produced to Blendjet a privilege log identifying privileged documents. Blendtec also objects to this request because it relates to information regarding Blendtec and to which Blendtec has a proprietary interest. Blendtec also objects on the ground that the subpoenaed documents are within Blendtec's custody, possession, or control and party discovery is ongoing. Blendjet should seek the requested documents from Blendtec prior to burdening a non-party for information that is within a party's custody. Blendtec intends to file a motion for protective order related to the documents Blendjet seeks through third party subpoenas instead of through the proper Rule 34 discovery process. Blendtec also intends to file a motion to quash the subpoenas with respect to documents that pertain to Blendtec and in which Blendtec has a proprietary interest.

REQUEST NO. 12: All Documents evidencing or relating to any assignments, licenses, or other agreements of any type entered into by Blendtec that relate to or reference the Blendtec Marks.

Response/Objections to Request No. 12: Blendtec objects to this Request because it seeks documents protected by the attorney-client privilege belonging to Blendtec. On November 17, 2022, Blendtec produced to Blendjet a privilege log identifying privileged documents. Blendtec also objects to this request because it relates to information regarding Blendtec and to which Blendtec has a proprietary interest. Blendtec also objects on the ground that the subpoenaed documents are within Blendtec's custody, possession, or control and party discovery is ongoing. Blendjet should seek the requested documents from Blendtec prior to burdening a non-party for information that is within a party's custody. Blendtec intends to file a motion for protective order related to the documents Blendjet seeks through third party subpoenas instead of through the proper Rule 34 discovery process. Blendtec also intends to file a motion to quash the subpoenas with respect to documents that pertain to Blendtec and in which Blendtec has a proprietary interest.

REQUEST NO. 16: All documents that relate to, refer to, or discuss BlendJet, including, but not limited to, its brand, customers, marketing and/or advertising strategies, competitors, the BlendJet Marks, and/or the BlendJet Products.

Response/Objections to Request No. 16: Blendtec objects to this Request because it seeks documents protected by the attorney-client privilege belonging to Blendtec. On November 17, 2022, Blendtec produced to Blendjet a privilege log identifying privileged documents. Blendtec also objects to this request because it relates to information regarding Blendtec to which Blendtec has a proprietary interest. Blendtec also objects on the ground that the subpoenaed documents are within Blendtec's custody, possession, or control and party discovery is ongoing. Blendjet should seek the requested documents from Blendtec prior to burdening a non-party for information that

is within a party's custody. Blendtec intends to file a motion for protective order related to the documents Blendjet seeks through third party subpoenas instead of through the proper Rule 34 discovery process. Blendtec also intends to file a motion to quash the subpoenas with respect to documents that pertain to Blendtec and in which Blendtec has a proprietary interest.

REQUEST NO. 17: All documents reflecting any communication or discussion between Blendtec and any third party related to or concerning the Current Litigation.

Response/Objections to Request No. 17: Blendtec objects to this Request because it seeks documents protected by the attorney-client privilege belonging to Blendtec. On November 17, 2022, Blendtec produced to Blendjet a privilege log identifying privileged documents. Blendtec also objects to this request because it relates to information regarding Blendtec and to which Blendtec has a proprietary interest. Blendtec also objects on the ground that the subpoenaed documents are within Blendtec's custody, possession, or control and party discovery is ongoing. Blendjet should seek the requested documents from Blendtec prior to burdening a non-party for information that is within a party's custody. Blendtec intends to file a motion for protective order related to the documents Blendjet seeks through third party subpoenas instead of through the proper Rule 34 discovery process. Blendtec also intends to file a motion to quash the subpoenas with respect to documents that pertain to Blendtec and in which Blendtec has a proprietary interest.

REQUEST NO. 18: All documents comprising or otherwise containing any factual background or analysis of any factual material related to the BlendJet Marks and/or BlendJet Products.

Response/Objections to Request No. 18: Blendtec objects to this Request to the extent it seeks documents protected by the attorney-client privilege belonging to Blendtec. On November 17, 2022, Blendtec produced to Blendjet a privilege log identifying privileged documents. Blendtec also objects on the ground that the subpoenaed documents are within Blendtec's custody,

possession, or control and party discovery is ongoing. Blendjet should seek the requested documents from Blendtec prior to burdening a non-party for information that is within a party's custody. Blendtec intends to file a motion for protective order related to the documents Blendjet seeks through third party subpoenas instead of through the proper Rule 34 discovery process. Blendtec also intends to file a motion to quash the subpoenas with respect to documents that pertain to Blendtec and in which Blendtec has a proprietary interest.

REQUEST NO. 19: Any cover letter, transfer memo, or similar transition document that accompanied any documents responsive to any of the foregoing Requests when they were transferred into D&W's possession, custody, or control.

Response/Objections to Request No. 19: Blendtec objects to this Request to the extent it seeks documents protected by the attorney-client privilege belonging to Blendtec. Blendtec also objects to this request because it relates to information regarding Blendtec to which Blendtec has a proprietary interest. Blendtec also objects on the ground that the subpoenaed documents are within Blendtec's custody, possession, or control and party discovery is ongoing. Blendjet should seek the requested documents from Blendtec prior to burdening a non-party for information that is within a party's custody. Blendtec intends to file a motion for protective order related to the documents Blendjet seeks through third party subpoenas instead of through the proper Rule 34 discovery process. Blendtec also intends to file a motion to quash the subpoenas with respect to documents that pertain to Blendtec and in which Blendtec has a proprietary interest.

DATED this 7th day of December, 2022.

DORSEY & WHITNEY LLP

/s/ Tamara L. Kapaloski

Brett Foster (#6089)

Grant Foster (#7202)
Tamara L. Kapaloski (#13471)

Attorneys for Plaintiff Blendtec Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of December, 2022, a true and correct copy of **BLENDTEC INC.'S OBJECTIONS TO BLENDJET'S SUBPOENAS TO DORSEY & WHITNEY LLP AND HOLLAND & HART LLP** was served on counsel of record via email at the following email addresses:

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